SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: CHI/43UE/LSC/2007/0021

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A & 20C OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED) AND SCHEDULE 11 COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Premises: 10 Grenehurst Park Capel Dorking Surrey RH5 5GA

Applicant : Mr J Shersby (Tenant)

Respondent: : Grenehurst Park Residents Co Ltd

Appearances for Applicant: Ms V Tribe Trainee Solicitor (14 June 2007) and in person on 7 August 2007

Appearances for Respondent: : Mr R Whitley

Date of Hearing: 14 June 2007 and 7 August 2007

Date of Decision: 14 August 2007..................

Leasehold Valuation Tribunal: Mrs F J Silverman LLM
Mr D Edge FRICS
Mr T Sennett MA MCIEH

DECISION

Section 27A Landlord and Tenant Act 1985 does not give the Tribunal power to vary service charge proportions. The Tribunal does not therefore have jurisdiction to consider this part of the Applicant's application.

Resurfacing of the main drive took place in 1998 at a cost of £4,300. This item was charged to the service charge and since no s 20 notice was served in respect of it the Respondent is limited to recovery of the then statutory maximum charge of £1000 in relation to this matter.

No s 20 notice was served prior to roof and chimney works in 2001 amounting to £12,44325. The Respondent is therefore limited to recovery of the then statutory maximum limit of £1000 for this item.

Repairs to the Klargester road were carried out in 2006, without service of a s20 notice. The Respondent is therefore restricted to recovery of the statutory maximum sum of £4250 in relation to this item.

Since the lease is silent on the payment of any form of administration charge,the Tribunal concludes that the Respondent is not entitled to require the payment of an administration charge on arrears of service charge.

The arrangement for payment of service charge by instalments is a concession made by the Respondent and they are entitled to withdraw that concession.

The Tribunal does not have jurisdiction under s 27A to alter the apportionment of the insurance premium as between the residents.

The Tribunal declines the Applicant's application to refund his fees.

The Applicant withdrew his applications under s 20C.

REASONS

1 The Applicant is the tenant of 10 Grenehurst Park Ockley Dorking Surrey (the property). The Respondent is the management company responsible under the terms of the lease for the management of Grenehurst Park (the estate).

2 The Applicant made two applications to the Tribunal, the first under s 27A Landlord and Tenant Act 1985 in which he challenged the service charges levied by the Respondent between the years 1997 and 2008. In the second application related to administration charges imposed by the Respondent on the arrears of service charge. He also made s 20C requests with both applications. The applications were heard together and this decision deals with both applications.

3 The estate comprises a former mansion house, now converted into 17 flats each held on a long lease, together with a number of detached freehold houses and mews cottages which are set in the extensive grounds. In all there are 40 residential units including the flats. The main house also contains an indoor swimming pool and leisure centre to which all residents of the estate have access. Apart from the private gardens belonging to the detached freehold houses the grounds, including a tennis court are also available for use by all residents. Drainage is by a Klargester tank (private sewage system) used by all the residential units.

4 The Tribunal inspected the estate on 14 June 2007 in the company of the Applicant , Mr Whitley and other members of the Board of the Respondent Company. We were shown the exterior and all the common parts of the mansion house, including the leisure facilities. We also walked round the grounds and were shown the position of the other residential units on the estate together with the gardens tennis court, parking areas and sewage system. We were also shown some of the items , such as the Klargeter road

and position of former chimney stacks to which the Applicant had made reference in his applications.

5 The estate is in very good order , well maintained and attractive. It was evident that maintenance and repairs had been carried out on a regular basis.

6 Following the Tribunal's inspection, the hearing commenced at Horsham District Council Offices on 14 June2007. Owing to the fact that the parties were not properly prepared for the hearing and that there was insufficient time in which to conclude the hearing, further Directions were issued and the resumed hearing took place at the same venue on 7 August 2007.

7 In relation to service charges the Applicant asserted that the proportions in which service charge was payable under his lease had been altered by the Respondent and he felt that the re-apportionment was inequitable and challenged its validity.

8 The service charge provisions for the estate are complex since they involve an apportionment of liability not only amongst the 17 flat owners but also between the various owners of the freehold units who benefit from use of the facilities on the estate including the grounds and driveways, sewage system and leisure centre . Schedule 4 part III of the lease gives the manager power to vary the proportions of service charge payable by each resident and this had been done following consultation with the residents. The variation had been considered to be necessary for a number of reasons including the fact that prior to the alteration the freehold owners had not been required to contribute to the upkeep of the mansion house, although they had access to it to use the leisure facilities, and a new swimming pool had been built the upkeep of which had not been included in the original service charge apportionments.

9 The Applicant confirmed to the Tribunal that (subject as below) he was not challenging either the amount of the service charge which he had been asked to pay nor the standard of the works done. He felt that the re-

apportionment of the service charge was inequitable and was in effect asking the Tribunal to vary that proportion.

10 The Tribunal explained to the Applicant that his application had been made under s 27A Landlord and Tenant Act 1985 under which section the Tribunal has power to review the reasonableness of service charges and the standard of works done. There was no power under that section to vary service charge proportions. The Tribunal did not therefore have jurisdiction to consider this part of his application.

11 It was admitted by the Respondent that no s 20 notices had been served in respect of a number of major works carried out on the estate. The items discussed below were challenged by the Applicant on the basis that s20 had not been complied with.

12 Works to the roof and chimneys was carried out in 1997 to the value of £21,879,99. These works were entirely funded by the developers of the estate at no charge to any of the residents. This item is not therefore a service charge item and does not fall within the scope of s 27A.

13 Resurfacing of the main drive took place in 1998 at a cost of £4,300. This item was charged to the service charge and since no s 20 notice was served in respect of it the Respondent is limited to recovery of the then statutory maximum charge of £1000 in relation to this matter.

14 No s 20 notice was served prior to further roof and chimney works in 2001 amounting to £12,44325. The Respondent is therefore limited to recovery of the then statutory maximum limit of £1000 for this item.

15 Repairs to the Klargester road were carried out in 2006, again without service of the requisite s20 notice. These works were undertaken after 31 October 2003 and the Service Charges (Consultation Requirements) (England) Regulations 2003 applied as did the amended statutory limit of £250 per dwelling where consultation had not taken place in accordance with

the statute. The Respondent is therefore restricted to recovery of the statutory maximum sum of £4250 in relation to this item.

16 In none of the above cases had an application been made to dispense with service of a s 20 notice, nor for retrospective consent. No evidence was put forward by the Respondent to suggest that any of the works had been urgent or an emergency repair.

17 No figures were available for the years 2007 or 2008. The Tribunal is therefore unable to deal with these years.

18 The Respondent asserted that the Applicant was debarred from challenging the service charges by s 27A(4) of the Landlord and Tenant Act 1985. This section applies where the service charges in question have been the subject of a previous litigation or arbitration. The Applicant is not prevented from challenging the charges simply because he had already paid them. The Tribunal rejects this contention put forward by the Respondent who appears to have misinterpreted the statute.

19 The Applicant contested the administration charge of £5 per quarter which had been added by the Respondent to his service charge account when he was in arrears. The lease under which the Applicant holds the property allows the Respondent to charge interest on overdue amounts but makes no provision for the levy of an administration charge. Since the lease is silent on this point the Tribunal concludes that the Respondent is not entitled to require the payment of an administration charge on arrears of service charge.

20 The Applicant asserted that the Respondent had been wrong to withdraw from him the facility to pay his service charge by instalments. As the lease does not make provision for payment by instalments, payment of service charge is to be of the full amount demanded. By concession the Respondent permits payment by instalments but withdraws this facility if a tenant/owner is in arrears. The Applicant had received notice of the withdrawal of the facility (page 88 of original trial bundle) and had

acknowledged receipt of this notice (page 90 of original trial bundle). The arrangement for payment of service charge by instalments is a concession made by the Respondent and they are entitled to withdraw that concession. We are satisfied that the Applicant had received adequate notice of the withdrawal of the facility which had been done because the Applicant was in arrears with his payments. We accept the Respondent's evidence that the instalment facility had been withdrawn from other tenants/owners in similar circumstances and that the Applicant had not been treated differently from others .

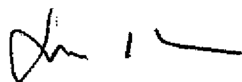
21 The Applicant challenged the insurance premiums which he had been required to pay on the basis that the apportionment of the premium among the residents was inequitable. He did not challenge the amount of the premium . The Tribunal has no jurisdiction to deal with this item since the Applicant is not challenging the reasonableness of the amount of the charge. The Tribunal does not have jurisdiction under s 27A to alter the apportionment of the insurance premium as between the residents.

22 The Applicant's complaints relating to the satellite television installation and the new swimming pool boiler had been resolved between the parties in the interval between the initial and resumed hearing dates and the Tribunal was not asked to adjudicate on these matters.

23 The Applicant withdrew both of his applications under s 20 C.

24 The Tribunal considered the Applicant's application for a refund of the fee which he had paid to the Tribunal on lodging his applications. He considered that the Tribunal should refund his fee as he felt that his application to vary the service charge proportions had been justified and that his points in relation to the absence of consultation procedures were valid. The Respondent opposed this application saying that there were no good grounds for the refund and that the Respondent had been put to time and expense in defending the application. Having considered this matter the Tribunal declines to refund the Applicant's fees. The major part of the

Applicant's case, relating to the re-apportionment of service charge percentages was misconceived.



Frances Silverman
Chairman
14 August 2007